

STATEMENT OF THE CASE

Bradley Kukman appeals his convictions for Possession of a Controlled Substance, as a Class D felony, and Carrying a Handgun without a License, as a Class A misdemeanor, following a bench trial. Kukman presents a single dispositive issue for our review, namely, whether the trial court erred when it did not acquit him based upon his defenses to the charged crimes.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 19, 2007, Kukman's mother, Brenda Hall, asked Kukman to pick her up at an auto repair shop in Greenwood where she was having her van repaired. With Hall was Kukman's brother William, who is a quadriplegic. When Kukman arrived at the shop, Hall told him that she and William did not need a ride home after all because the repairs would be done while they waited. In preparation for having the repairs done, Hall removed some personal belongings from the van, including her handgun, for which she had a valid license. Because she did not have a handbag with her, Hall asked Kukman to take her gun home for her. In addition, Hall gave Kukman William's prescribed medication to take home, namely, Percocet and Lortab, which are Schedule II controlled substances.

Kukman, who suffers from diabetes, became disoriented on his way home, and he crashed his car into the rear of another car. When police arrived, they observed Kukman behaving as though he was intoxicated. But a portable breath test showed that Kukman had not had any alcohol, and a subsequent blood test showed no narcotics in his system.

Officers observed a handgun in plain view inside the car, and they asked Kukman about it. He told the officers that he did not have a license for the gun and that it belonged to his mother. When officers conducted a pat-down search of Kukman, they found a vial containing one Percocet tablet and one Lortab Tablet. Kukman did not have a prescription for those tablets; they were prescribed for his brother, who was at the repair shop with Hall.

The State charged Kukman with two counts of possession of a controlled substance and carrying a handgun without a license. Following a bench trial, the trial court entered judgment of conviction for one count of possession of a controlled substance and carrying a handgun without a license and sentenced Kukman accordingly. This appeal ensued.

DISCUSSION AND DECISION

Kukman admits that the evidence is sufficient to support his convictions. But he maintains that the evidence also supports his defenses to each crime. In essence, he contends that the trial court erred when it did not acquit him based upon his defenses. We cannot agree.

With regard to the possession conviction, Kukman maintains that “[i]n transporting the [Lortab] tablet home, Kukman was acting as an agent under authority of his brother, a severely physically disabled man who is unable to take his medications without assistance and in whose name the drug was prescribed.” Brief of Appellant at 8. Indiana Code Section 35-48-4-7(a) prohibits the possession of a Schedule II drug, such as Lortab, without a valid prescription. Kukman asks that we carve out an exception to the

law to accommodate the circumstances that led to his arrest. He contends that he was an agent for his brother, who had a valid prescription for the tablet, and that that agency relationship should make his possession lawful.

We might consider Kukman's argument on this point if there were some compelling reason that Kukman was carrying his brother's Lortab. There is no suggestion that any kind of emergency warranted the possession. Instead, it appears that Kukman took the tablets from Hall because she did not have a handbag with her. In other words, Kukman illegally possessed his brother's Lortab so as not to inconvenience his mother. We cannot say that the trial court erred when it found Kukman guilty of possession of the Lortab despite his proffered defense.

Kukman likewise maintains that he possessed his mother's handgun out of necessity, which should preclude his conviction. In order to prevail on a claim of necessity, the defendant must show (1) the act charged as criminal must have been done to prevent a significant evil, (2) there must have been no adequate alternative to the commission of the act, (3) the harm caused by the act must not be disproportionate to the harm avoided, (4) the accused must entertain a good faith belief that his act was necessary to prevent greater harm, (5) such belief must be objectively reasonable under all the circumstances, and (6) the accused must not have substantially contributed to the creation of the emergency. Dozier v. State, 709 N.E.2d 27, 29 (Ind. Ct. App. 1999).

Here, again, the evidence shows that Kukman took the handgun merely for his mother's convenience. Kukman alleges that the gun was safer in his car than with his mother, because she did not have a handbag in which to keep it. But one "adequate

alternative” to his taking the handgun would have been for Kukman to drive his mother home with the handgun, as they had originally planned. See id. Kukman’s mother had a license to carry the handgun, and Kukman did not. The handgun was loaded when officers found it in Kukman’s car. Under the circumstances, Kukman has not demonstrated that his conduct was necessary to avoid a “significant evil” or was “objectively reasonable.” See id. The trial court did not err when it rejected Kukman’s defense.

Affirmed.

ROBB, J., and MAY, J., concur.